

**EXHIBIT B**

**Information Technology Professional Services (ITPS)**

SAMPLE Second-Tier Contract # (Order Document)



## Washington State Department of Social and Health Services

### SAMPLE ITPS Second-Tier Contract (DSHS Order Document)

<b>Contract Number</b>	<b><u>Contract #</u></b>
Contractor	<u>Contractor Name</u>
DSHS Solicitation No.	ITPS #1624-584
Contractor's Proposal Dated	
Contractor's DES ITPS Master Contract No.	# _____
ITPS Category:	<input type="checkbox"/> 04113 - IT Funding and Financial Analysis <input type="checkbox"/> 05613 - IT Business Analysis <input type="checkbox"/> 05813 - COOP & Disaster Recovery <input type="checkbox"/> 3. External IT QA and IV&V <input type="checkbox"/> 4. IT Project Management <input type="checkbox"/> 5. Technology Architecture Planning & Dev. <input type="checkbox"/> 6. Security Analysis <input type="checkbox"/> 7. Enterprise Content Management <input type="checkbox"/> 9. Systems Analysis <input type="checkbox"/> 10. Network & System Administration <input type="checkbox"/> 11. Software Quality Assurance & Testing <input type="checkbox"/> 12. Desktop Applications Development & Training <input type="checkbox"/> 13. Geographic Information Systems Application Dev. <input type="checkbox"/> 14. Workstation Installation & Support <input checked="" type="checkbox"/> 15. Client Server, Web & N-Tier Application Dev. <input type="checkbox"/> 16. General Mainframe Development <input type="checkbox"/> 17. General DB Administrator / DB Dev. / Data Analyst

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## 1 PARTIES

This ITPS Second-Tier Contract (Contract) is entered into by the Washington State Department of Social and Health Services (DSHS) located at 1115 Washington Street SE, Olympia WA 98504 and Contractor, licensed to conduct business in the state of Washington, located at Contractor Address (Contractor), together, the "Parties."

## 2 PURPOSE

The purpose of this Contract is to hire one (1) application developer resource to complete the new Local Funds System using an SQL Server back-end, the Microsoft .Net/IIS application framework, and Microsoft MVC web application technology. In addition, the application developer will support user acceptance testing of the system, and will conduct application and technical training with the DSHS development team.

## 3 WORK PERIOD OF PERFORMANCE

From	To
<b>April 7, 2016</b>	<b>December 31, 2016</b>

This Contract may be extended by amendment for up to two (2) additional one (1) year periods, at the sole discretion of DSHS by written agreement between the parties hereto.

## 4 COMPENSATION

Payment is approved once DSHS has reviewed and verified that the Contractor has performed work as detailed herein. A detailed timesheet showing all work performed broken down to the half hour must be maintained by the Contractor. Invoices will be based on hours worked. Deliverables and detail must show a direct correlation to the work listed in the Solicitation and this Work Order

Hourly Compensation Table				
Name	Estimated Performance Period		Estimated <u>Max</u> Hours	Hourly Rate
	From	To		
1. <b>[Contractor Name]</b>	April 7, 2016	December 31, 2016	1,350	
Total Maximum Compensation for This Contract				135,000.00

Prior to commencing any work that exceeds the work contract specification, written approval from DSHS must be received.

Invoices must be prepared in accordance with the billing procedures described herein, and presented to DSHS for acceptance.

This Contract may be renegotiated to provide for additional services, within the scope of this Work Order, subject to continued satisfactory completion of work as specified herein and written approval from DSHS.

## 5 STATEMENT OF WORK

### 5.1 Scope of Work

The developer will work with the Local Funds System project team to complete the new system, perform system testing, support user acceptance testing, migrate all current data to the new system, and roll out the application to all 9 of the institutions:

- **Green Hill School**
- **Naselle Youth Center**
- **Echo Glen Children's Center**
- **Rainier School**
- **Fircrest**
- **Special Commitment Center**
- **Lake Land Village**
- **Eastern State Hospital**
- **Western State Hospital**

### 5.2 Deliverables

The Contractor shall furnish the necessary personnel, equipment, material and/or services, and otherwise do all things necessary for or incidental to the performance of work as set forth in the deliverables below.

Brief descriptions of the deliverables and other required reports are set out below. Because the Contractor will be controlling the manner and means of conducting the work, the descriptions are not intended to fully describe all work that the Contractor would need to perform to complete the deliverables. The Contractor will work with the DSHS development team on the design of the deliverables. Upon completion of the design, the Contractor will aid DSHS in the coding and development of these deliverables. DSHS will advise the Contractor of any errors or concerns before the Contractor completes the final deliverable. The Contractor will produce a final version of each deliverable that addresses DSHS' feedback.

## **SYSTEM DEVELOPMENT**

Deliverable:	Developed Local Funds System that meets the functional specifications.
Description:	The objectives of the System Development/Testing Stage are to develop, configure and install the Local Funds System to perform unit, system/sub-system, and integration testing to ensure all Local Funds requirements are satisfied. The Contractor must revise the Detailed System/Software Design to reflect changes identified during the testing process. The Contractor must provide updated pages to the Department for review and acceptance.
Services that are Required	
Contractor Tasks:	<ol style="list-style-type: none"><li>1. Develop System Software.</li><li>2. Develop, implement and document rigorous and professionally sound unit, system, integration and regression test procedures.</li><li>3. Update the Detailed System/Software Design Document.</li></ol>
Agency Tasks:	<ol style="list-style-type: none"><li>1. Review and accept the Revised System/Software Modification Design.</li><li>2. Identify the application reports and system queries for the Contractor.</li><li>3. Review and accept the application reports and system queries.</li></ol>
Outcomes:	An installed Local Funds System that has been unit, system/sub-system, and integration tested in the development environment.

Acceptance Criteria:	Meet general acceptance criteria for documentation. Design complies with Department technology and architecture standards. Reports and queries contain all of the required data elements and correct search criteria.
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## **SYSTEM TESTING**

<b>Deliverable:</b>	A Local Funds System that passes all System and Integration requirements and operates with no serious defects.
<b>Description:</b>	<p>System and Integration Testing will demonstrate that the Local Funds System, the Contractor's staff and Department staff are prepared for full production. System and Integration Testing will also ensure that all business areas are ready for production. This includes testing of new processes and procedures in concert with the new system.</p> <p>System and Integration Testing must include a test of actual data in a full operational environment. An additional component of the System and Integration Testing is the demonstration and verification of data security.</p>
<b>Services that are Required</b>	
<b>Contractor Tasks:</b>	<ol style="list-style-type: none"> <li>1. Develop System Test Plan.</li> <li>2. Develop System Test Plan for each Institution.</li> <li>3. Develop System Test Criteria (Department and Contractor joint effort).</li> <li>4. Create System Test Report of the test results.</li> <li>5. Create System backup, fail over, and recovery test plans.</li> <li>6. A Local Funds System that passes all System and Integration requirements and operates with no serious defects.</li> </ol>
<b>Agency Tasks:</b>	<ol style="list-style-type: none"> <li>1. Review and accept the System Test Plan.</li> <li>2. Review and accept the System Test Plans for each Institution.</li> <li>3. Activate the System backup, fail over, and recovery test.</li> <li>4. Review and accept the System Test Criteria (Department and Contractor joint effort).</li> <li>5. Review and accept the System Test Report</li> <li>6. Review and accept a Local Funds system that passes all System and Integration test requirements.</li> </ol>
<b>Outcomes:</b>	A Local Funds system that meets all business reporting and query requirements in the QA/Test environment.
<b>Acceptance Criteria:</b>	The Contractor will certify to the Department that the Local Funds System has passed all System/Integration Tests, having met all functional requirements and specifications with no non-cosmetic deficiencies.

## **USER ACCEPTANCE TESTING (UAT)**

<b>Deliverable:</b>	User Acceptance Test Criteria and Results Document (Department and Contractor joint effort)
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	that is based upon User Acceptance Test Plan (Department Responsibility).
Description:	<p>This task will ensure that all Local Funds System functions are tested by users including but not limited to; proper functioning of edits, audits, and business rules, the accuracy of data, revenue reconciliation, file maintenance, and the format and content of all system outputs, including outputs from reporting functions and printing. UAT also offers the opportunity to test User Manuals, forms, procedures and business processes. UAT will be conducted in a controlled and stable environment in the Department Test (QA) environment.</p> <p>The Department will be responsible for developing the UAT Plan and UAT Scripts. The Department will also identify the schedule for user acceptance test cycles and delivery of output. The Department will be responsible for the maintenance and operation of the UAT environment, ensuring that a current, thoroughly tested UAT environment is available at all times, and preparing acceptance test data. The Department will develop the UAT Results Document and User Acceptance Criteria. The Department will identify the schedule for user acceptance test cycles and delivery of output which will include any special month end, year end and biennium process. The Department will develop the test scripts and conduct both function oriented tests and technical oriented tests, as required by DSHS. The Department will perform these test scripts to verify operation of the upgraded system.</p> <p>Testing should be developed to test each aspect of system operations including but not limited to:</p> <ul style="list-style-type: none"> <li>• User and security access</li> <li>• Auditing capabilities</li> <li>• Restitution Funds</li> <li>• Client management</li> <li>• Client Payroll import</li> <li>• Payee management</li> <li>• Accounts management</li> <li>• Basic deposits</li> <li>• Basic expenses</li> <li>• Batch expenses</li> <li>• Batch receipts</li> <li>• End of day reconciliation</li> <li>• End of month reconciliation</li> <li>• Voiding transactions</li> <li>• Transfer of funds across institutions</li> <li>• Petty Cash tracking</li> <li>• Reporting, Report Forms and Queries</li> <li>• Check Writing/Printing</li> <li>• Printing</li> </ul>
Services that are Required	
Contractor Tasks:	<ol style="list-style-type: none"> <li>1. Provide general test support and advice.</li> <li>2. Department and Contractor, in a joint effort, will develop the User Acceptance Criteria.</li> <li>3. Department and Contractor, in a joint effort, will develop the User Acceptance Test Results Document.</li> <li>4. Identify and correct any production issues.</li> <li>5. The Contractor will assist the Department in the organization, planning and development of the test scripts.</li> </ol>

Agency Tasks:	<ol style="list-style-type: none"> <li>1. Develop the User Acceptance Test Plan and User Acceptance Test Scripts.</li> <li>2. Collect representative test data required to validate the system.</li> <li>3. Prepare test plan, test cases and checklist.</li> <li>4. Identify the schedule for user acceptance test cycles and delivery of output.</li> <li>5. Provide maintenance and operation of the User Acceptance Test environment, ensuring that a current, thoroughly tested User Acceptance Test environment is available at all times.</li> <li>6. Department and Contractor, in a joint effort, will develop the User Acceptance Test Criteria and Results Document.</li> <li>7. Preparing acceptance test data.</li> <li>8. Execute the acceptance test data and validate the test results.</li> <li>9. Retest any corrected deficiencies.</li> <li>10. Acceptance of system and approval to Go Live.</li> </ol>
Outcomes:	Local Funds System has passed UAT and is ready for implementation.
Acceptance Criteria:	The Local Funds System will have passed the User Acceptance Tests meeting functional, technology, and performance requirements for the system with no deficiencies.

## **APPLICATION AND TECHNICAL TRAINING (KNOWLEDGE TRANSFER)**

Deliverable:	Application and Technical Training Plan and associated training.
Description:	<p>It is anticipated that the Department training staff will train the users on the system during implementation. Specific areas where the Contractor training for the Department project staff must be addressed include but are not limited to:</p> <p>Technical</p> <ul style="list-style-type: none"> <li>• Application operation</li> <li>• System administration and application functionality</li> <li>• System configuration</li> <li>• Security Administration</li> <li>• Trouble Shooting</li> </ul> <p>Functional</p> <ul style="list-style-type: none"> <li>• All features of the system tool set, i.e., security access, printing, reporting and query, revenue collection, distribution and reconciliation.</li> </ul> <p>Application and technical training includes knowledge transfer of the Local Funds system from the Contractor to the Department staff.</p>
<b>Services that are Required</b>	
Contractor Tasks:	<ol style="list-style-type: none"> <li>1. Develop Application and Technical Training Plan</li> <li>2. Provide Application and Technical Training including Knowledge Transfer</li> </ol>
Agency Tasks:	<ol style="list-style-type: none"> <li>1. Review and Accept the Application and Technical Training Plan</li> <li>2. Assign staff for Application and Technical Training</li> <li>3. Assign staff to participate in Application and Technical Training/Knowledge Transfer</li> <li>4. Assign staff to provide training to end users</li> </ol>
Outcomes:	Department staff has received the required Local Funds System technical and functional training.
Acceptance Criteria:	Meet general acceptance criteria for documentation. Department staff received training per plan.



## **IMPLEMENTATION AND DEPLOYMENT**

Deliverable:	Local Funds Implementation Plan (Department and Contractor joint effort) and cutover.
Description:	Development of an Implementation Plan generally will begin during design and be refined during development. The tasks in the Implementation Plan will be performed during the Implementation/Deployment stage. The Implementation Plan identifies all the activities which must be accomplished for a successful implementation. The final step in implementation is to officially accept and cutover to the new system functionality.
Services that are Required	
Contractor Tasks:	<ol style="list-style-type: none"> <li>1. Develop Local Funds Implementation Plan (Department and Contractor joint effort)</li> <li>2. Provide general support and advice.</li> <li>3. Assist users with any technical Local Funds issues or system understanding.</li> </ol>
Agency Tasks:	<ol style="list-style-type: none"> <li>1. Develop Local Funds Implementation Plan (Department and Contractor joint effort)</li> <li>2. The Department will provide and train Local Funds trainers for implementation.</li> <li>3. The Department will prepare and provide training materials.</li> <li>4. The Department will conduct Local Funds training classes to Department staff.</li> <li>5. Assume responsibility for day-to-day operations of the system.</li> <li>6. Report any Local Funds issues encountered to the Contractor.</li> </ol>
Outcomes:	Operational Local Funds System.
Acceptance Criteria:	Meet general acceptance criteria for documentation.

## **DOCUMENTATION**

Deliverable:	Local Funds Technical, System Administration, Security Administration and User Documentation
Description:	The Contractor is responsible for providing to the Department complete, accurate, and timely documentation of the Local Funds System. The Local Funds Systems Documentation must be provided prior to final Department acceptance of the entire system. Following Implementation, the Contractor must prepare updates to the Systems Documentation to incorporate all changes, corrections, or enhancements to the Local Funds System. Updates to the Systems Documentation must be delivered to the Department prior to Department acceptance of the change, unless otherwise agreed to by DSHS.
Services that are Required	
Contractor Tasks:	Provide Local Funds Technical, System Administration, Security Administration and User Documentation.
Agency Tasks:	Review and accept Local Funds Technical, System Administration, Security Administration and User Documentation that includes modifications (if applicable).
Outcomes:	Local Funds Technical, System Administration, Security Administration and User Documentation that has been delivered to the Department.
Acceptance Criteria:	Meet general acceptance criteria for documentation.

## **FINAL SYSTEM ACCEPTANCE**

Deliverable:	System Acceptance and Final Payment
Description:	The Department verifies that all deliverables have been completed and accepted and that system is functioning according to specifications without deficiencies for a minimum of fourteen business days.
Services that are Required	
Contractor Tasks:	Complete contract obligations.
Agency Tasks:	1. Reconcile contract deliverables and payments. 2. Process final payment.
Outcomes:	Accepted Local Funds System
Acceptance Criteria:	All deliverables provided and contract obligations satisfactorily met. Meets Performance Specification and Functionality Specifications; the System will have performed defect free for a period of fourteen business days after implementation.

### **5.3 Additional Requirements**

- 5.3.1 The majority of work is expected to be performed on site, at a DSHS-provided office space, In Olympia, WA.
- 5.3.2 A security badge is required and will be provided to the Contractor for access into the work area and for agency computer access. The Contractor will be required to complete a non-disclosure agreement and annual Security Awareness training prior to starting work. If on-site work is required, the Contractor will can be provided with a hotel cubical during regular business hours.
- 5.3.3 Regular business hours are Monday thru Friday 8:00 am to 5:00 pm Pacific Standard Time.

## **6 TERMS & CONDITIONS**

### **6.1 Changes**

A change request may be submitted by either of the Parties, to modify, delete, or add, in whole or in part, the deliverables or services of this Work Order, if made in accordance with and within the scope of this Work Order.

Once the change request is mutually agreed to by both Parties, it should be documented in a final written change order and signed by both Parties.

The DSHS Project Manager, DSHS Contract Manager, or other DSHS point of contact as set out in the original Work Order, and the Contractor Project Manager or designee as set out in the original Work Order are charged with managing the negotiation of the Change Request. The above listed persons are also charged with signing the final change order.

Changes to be made to the maximum consideration, end date of the work order, or are beyond the scope of this Work Order or original solicitation may not be completed via change request/change order.

## **6.2 Billing Procedures**

### **6.2.1 Invoices**

DSHS will pay the Contractor within 30 calendar days of receipt of properly executed invoices. The Contractor shall submit invoices, once a month, using DSHS supplied State Form A-19 Invoice Voucher. The A-19 must be accompanied by appropriate supporting documentation sufficient to permit DSHS to validate and substantiate each invoiced item. The A-19 along with copies of the supporting documentation (e.g. staff timesheets) must be emailed to Susan Herring at [Herrisr@dshs.wa.gov](mailto:Herrisr@dshs.wa.gov) and Samreth Sam at [Sams@dshs.wa.gov](mailto:Sams@dshs.wa.gov) by the 10<sup>th</sup> of each month. The rates shall be in accordance with those set forth in Section 4, Compensation, of this Work Order.

### **6.2.2 Payment**

Payment shall be made after acceptance by DSHS of the services described in the Statement of Work. No payment in advance or in anticipation of services or supplies under this Contract shall be made by DSHS. Claims for payment submitted by the Contractor or costs due and payable under this Contract that were incurred prior to the expiration date shall be paid to the Contractor, if received by DSHS within 90 days after the expiration date.

Payment will be considered timely if funds are postmarked or dated within 30 days of receipt of either of the following, whichever is later: Receipt of properly executed invoice vouchers; acceptance of deliverables by DSHS; or statewide payee desk.

### **6.2.3 Statewide Payee Desk**

In order to receive payment, Contractors must be registered with the Statewide Payee Desk maintained by DES for processing Contractor payments. Purchasers who are Washington state agencies cannot make payments to Contractor until Contractor is registered. Registration materials are available at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>.

## **6.3 Insurance**

The Contractor shall provide insurance coverage as set forth in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from acts or omissions of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. The Contractor shall provide insurance coverage which the Contractor shall maintain in full force and effect during the term of this Contract as detailed herein.

The Contractor shall at all times comply with the following insurance requirements:

### **6.3.1 General Liability Insurance**

The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of the parties' performance under this Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

In lieu of general liability insurance mentioned above, if the contractor is a sole proprietor with less than three contracts, the contractor may choose one of the following three general liability policies but only if attached to a professional liability policy, and if selected the policy shall be maintained for the life of the contract:

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the contractor wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees shall be named as additional insured's.

or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured's.

or

Premises Liability Insurance and provide services only at their recognized place of business, including coverage for bodily injury, property damage with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured.

#### **6.3.2 *Business Automobile Liability Insurance***

The Contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. The Contractor's carrier shall provide DSHS with a waiver of subrogation or name DSHS as an additional insured.

#### **6.3.3 *Professional Liability Insurance (PL)***

The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.

#### **6.3.4 *Worker's Compensation***

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed for Worker's Compensation under RCW 51 by the Contractor or its employees under such laws and regulations.

#### **6.3.5 *Employees and Volunteers***

Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

#### **6.3.6 *Subcontractors***

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract.

#### **6.3.7 Separation of Insured's**

All insurance policies shall include coverage for cross liability and contain a "Separation of Insured's" provision.

#### **6.3.8 Insurers**

The Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports' rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.

#### **6.3.9 Evidence of Coverage**

The Contractor shall, upon request by DSHS, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the Contractor under this Contract. The Certificate of Insurance shall identify the Washington State Department of Social and Health Services as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

The Contractor shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.

#### **6.3.10 Material Changes**

The insurer shall give the DSHS point of contact listed on page one of this Contract 45 days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation.

#### **6.3.11 General**

By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

#### **6.3.12 Waiver**

The Contractor waives all rights, claims and causes of action against the State of Washington and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by Contractor.

### **6.4 Safeguarding of Personal Information**

#### **6.4.1 Use**

Contractor shall not use or disclose Personal Information in any manner that would constitute a violation of federal law or applicable provisions of Washington State law. Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of Personal Information.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use it solely for the purposes of accomplishing the services set forth in the Contract.

#### **6.4.2 Protection**

Contractor shall Protect Personal Information collected, used, or acquired in connection with the Contract, against unauthorized use, disclosure, modification or loss.

Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of DSHS or as otherwise authorized by law.

Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure.

Contractor shall make the Personal Information available to amend as directed by DSHS and incorporate any amendments into all the copies maintained by the Contractor or its Subcontractors. Contractor shall certify its return or destruction upon expiration or termination of the Contract and the Contractor shall retain no copies. If Contractor and DSHS mutually determine that return or destruction is not feasible, the Contractor shall not use the Personal Information in a manner other than those permitted or authorized by state and federal laws.

#### **6.4.3 *Salting***

DSHS reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Contractor through the Contract. The monitoring, auditing, or investigating may include, but is not limited to, "salting" by DSHS. Salting is the act of introducing data containing unique but false information that can be used later to identify inappropriate disclosure of data.

#### **6.4.4 *Unauthorized Access, Use or Disclosure***

Contractor shall notify DSHS in writing immediately upon becoming aware of any unauthorized access, use or disclosure. Contractor shall take necessary steps to mitigate the harmful effects of such use or disclosure. Contractor is financially responsible for notification of any unauthorized access, use or disclosure. The details of the notification must be approved by DSHS. Contractor agrees to indemnify and hold harmless DSHS for any damages related to unauthorized use or disclosure by Contractor, its officers, directors, employees, subcontractors or agents.

Any breach of this clause may result in termination of the Contract and the demand for return of all Personal Information.

### **6.5 Assignment of Contractor Staff**

The Contractor staff identified in the response to the Solicitation will work for at least the approximate number of hours described. DSHS may at its sole discretion, without cause, and at any time during the term of the Contract, require immediate replacement of a Contractor's staff member. Unless authorized in writing in advance by DSHS, subcontracting or substituting proposed Contractor staff/employees with other staff/employees will not be allowed. The Contractor certifies that all activity pursuant to this Contract is in full compliance with RCW 42.52.080, Employment After Public Service.

DSHS may assign other Contractors and/or DSHS staff to work with the Contractor. The Contractor shall work collaboratively and share knowledge and expertise with DSHS to ensure a successful and timely completion. Contractor shall not supervise DSHS employees. The Statement of Work is not intended to completely describe all work the Contractor would need to complete the deliverables. The Contractor shall control the manner and means and otherwise do all things necessary for or incidental to the performance of work set forth in the Statement of Work.

### **6.6 Performance Measurement and Monitoring**

Impacts and outcomes achieved as a result of the delivery of services may be measured and evaluated periodically by DSHS. DSHS may evaluate Contractor performance at Contract completion and at least once a year. An annual evaluation will be conducted during the sixty-day period following the Contract anniversary date, except DSHS can establish a date which better accommodates DSHS' particular needs. The evaluation will cover the period ending with an established date. DSHS may utilize the standardized form and/or supplement the process with special performance factors unique to the specific contractual needs. Each evaluation shall include an assessment of the Contractor's efforts toward achieving DSHS objectives. The evaluation is designed to aid DSHS in referrals, clarify Contractor's duties and DSHS' expectations, and inform Contractors of their performance strengths and weaknesses.

## **6.7 Order of Precedence**

The items listed below are incorporated by reference herein. In the event of an inconsistency in this Information Technology Professional Service (ITPS) Second-Tier Contract, or conflict with the Contractor's ITPS Master Contract with the Department of Enterprise Services (DES), unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and Washington state statutes and regulations
2. This ITPS Second-Tier Work Order (Contract) including all attached Exhibits
3. Contractor's response to the DSHS' Solicitation (Contractor's proposal)
4. Contractor's DES ITPS Master Contract
5. Any other provisions of this Contract incorporated by reference or otherwise.

## **6.8 Certification Regarding Debarment, Suspension and Ineligibility**

If federal funds are the basis for this Contract, the Contractor certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any federal department or agency.

# **7 CONTACTS**

The following individuals are responsible for and shall be the contact person for all communications and billings regarding performance of this Contract.

<b>Contractor</b>		<b>Purchaser</b>	
Contact:		Contact:	Susan Herring
Address:		Address:	1115 Washington St SE
Phone:		Phone:	(360) (902-7681)
Email:		Email:	<a href="mailto:Herrisr@dshs.wa.gov">Herrisr@dshs.wa.gov</a>

## SIGNATURES

**IN WITNESS WHEREOF**, the parties have executed this ITPS Second-Tier Contract.

By signing below, DSHS and the Contractor acknowledge that this Contract is issued under the provisions of the Washington State Department of Enterprise Services (DES) Information Technology Professional Services Master Contract Program. The services authorized are within the scope of services set forth in the Master Contract between DES and the Contractor. All rights and obligations of the parties are subject to and governed by the Master Contract including any subsequent modifications incorporated herein. The persons signing below warrant that they have the authority to execute this Contract.

**Contractor**

*<Contractor's Company Name>*

**Accepted**

*Washington State Department of Social and Health  
Services*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Print or Type Name*

\_\_\_\_\_  
*Sarah Pendleton, IT Contracts Manager*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Email*

\_\_\_\_\_  
*Federal Tax ID Number ((TIN))*



## **EXHIBIT A – DSHS General Terms and Conditions**

- 1. Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. “Central Contract Services” means the DSHS central headquarters contracting office, or successor section or office.
  - b. “Confidential Information” or “Data” means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
  - c. “Contract” or “Agreement” means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
  - d. “Contracts Administrator” means the manager, or successor, of Central Contract Services or successor section or office.
  - e. “Contractor” means the individual or entity performing services pursuant to this Contract and includes the Contractor’s owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, “Contractor” includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
  - f. “Debarment” means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
  - g. “DSHS” or the “Department” means the state of Washington Department of Social and Health Services and its employees and authorized agents.
  - h. “Encrypt” means to encode Confidential Information into a format that can only be read by those possessing a “key”; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.
  - i. “Personal Information” means information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
  - j. “Physically Secure” means that access is restricted through physical means to authorized individuals only.
  - k. “Program Agreement” means an agreement between the Contractor and DSHS

containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.

- l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.
  - m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - n. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
  - o. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
  - p. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
  - q. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
  - r. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.
2. **Amendment.** This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.
3. **Assignment.** The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.
4. **Billing Limitations.**
- a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.

- b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
  - c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.
- 5. Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
- 6. Confidentiality.**
- a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:
    - (1) as provided by law; or,
    - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
  - b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
    - (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
    - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
    - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
      - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
      - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
      - (c) Verifying after transmittal that the fax was received by the intended recipient.
    - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:
      - (a) Use a Trusted System.
      - (b) Encrypt the Confidential Information, including:

- i. Encrypting email and/or email attachments which contain the Confidential Information.
- ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

**Note: If the DSHS Data Security Requirements Exhibit is attached to this contract, this item, 6.b.(4), is superseded by the language contained in the Exhibit.**

(5) Send paper documents containing Confidential Information via a Trusted System.

(6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.

- c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.
- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
- e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

**7. Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.

**8. Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

**9. Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold

himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.

10. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.
11. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

12. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.
13. **Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.
14. **Survivability.** The terms and conditions contained in this Contract or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.
15. **Contract Renegotiation, Suspension, or Termination Due to Change in Funding.**

If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

- a. At DSHS's discretion, the Contract or Program Agreement may be renegotiated under the revised funding conditions.

- b. DSHS's discretion, DSHS may give notice to Contractor to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
    - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
    - (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
    - (3) If the Contractor's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
  - c. DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.
16. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the DSHS Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

#### **Additional General Terms and Conditions – IT Service Contracts:**

- 17. **Advance Payment.** DSHS shall not make any payments in advance or in anticipation of the delivery of services to be provided pursuant to this Contract.
- 18. **Commencement of Work.** No work shall be performed by the Contractor until the Contract is executed by the Contractor and DSHS and received by DSHS.
- 19. **Construction.** The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract.
- 20. **Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.

**21. Contractor Commitments, Warranties and Representations.** Any written commitment by the Contractor within the scope of this Contract shall be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment may constitute breach and shall render the Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by the Contractor includes but is not limited to: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by the Contractor in its response to the solicitation resulting in this Contract ("Bid") or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Bid or used to effect the sale to DSHS.

**22. Disputes.**

- a. In the event a bona fide dispute concerning a question of fact arises between DSHS and the Contractor that cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- b. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days (which shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington). The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
  - (1) If the dispute cannot be resolved after three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
  - (2) The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a written decision on the dispute in the shortest practical time.
  - (3) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- c. Unless irreparable harm will result, the parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
- d. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- e. Except to the extent that disclosure is required by applicable law or court order, all negotiations pursuant to this clause are confidential and shall be treated by the parties as statements made in compromise negotiations for purposes of the rules of evidence.

- f. DSHS and the Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- g. If the subject of the dispute is the amount due and payable by DSHS for services being provided by the Contractor, the Contractor shall continue providing services pending resolution of the dispute provided DSHS pays the Contractor the amount DSHS, in good faith, believes is due and payable, and may withhold the difference between such amount and the amount the Contractor, in good faith, believes is due and payable.

**23. Health and Safety.** The Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health or safety of any DSHS client with whom the Contractor has contact.

**24. Indemnification and Hold Harmless.**

- a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind or nature, arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
- b. The Contractor's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.
- c. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
- d. Nothing in this term shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

**25. Industrial Insurance Coverage.** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

**26. Limitation of Liability.**

- a. The parties agree that neither the Contractor nor DSHS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special



damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. Damages resulting from termination for default, breaches of the Maintenance of Records clause, breaches of the data security requirements, or breaches of confidentiality including disclosure of PHI, are not consequential, incidental, indirect, or special damages as that term is used in this section.

- b. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

**27. Notice of Overpayment.** If the Contractor receives a Contractor overpayment notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:

- a. Be *received* by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
- b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
- c. Include a statement as to why the Contractor thinks the notice is incorrect; and
- d. Include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a Contractor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

**28. Ownership/Rights in Data**

- a. Both Custom Services and Commercial Off-The-Shelf material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to DSHS with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise DSHS at the time of delivery of

Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. DSHS shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by the Contractor with respect to any Preexisting Material delivered under this Contract. DSHS shall not have the right to modify or remove any restrictive markings placed upon the Preexisting Material by the Contractor.

b. Custom Services. If this Contract involves custom service, the below sections (b)(1) through (4) apply.

- (1) DSHS and the Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by DSHS. The Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- (2) If for any reason the Work Product would not be considered a work made for hire under applicable law, the Contractor assigns and transfers to DSHS the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- (3) The Contractor shall execute all documents and perform such other proper acts as DSHS may deem necessary to secure for DSHS the rights pursuant to this section.
- (4) The Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of DSHS. The Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

c. Commercial Off-The-Shelf. If this Contract involves commercial off-the-shelf products, the below sections (c)(1) through (3) apply.

- (1) The Contractor shall maintain all title, copyright, and other proprietary rights in the Software. DSHS does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Contractor hereby warrants and represents to DSHS that Contractor is the owner of the Software licensed

hereunder or otherwise has the right to grant to DSHS the licensed rights to the Software provided by Contractor through this Contract without violating any rights of any third party worldwide.

- (2) The Contractor represents and warrants that Contractor has the right to license the Software to DSHS as provided in this Contract and that DSHS' use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights worldwide.
- (3) The Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Contractor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

**29. Patent and Copyright Indemnification.**

- a. The Contractor, at its expense, shall defend, indemnify, and hold DSHS harmless from and against any claims against DSHS that any Product or Work Product supplied hereunder, or DSHS's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Product shall mean any Contractor-supplied equipment, Software, or documentation. The Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DSHS provided that DSHS:
  - (1) Promptly notifies the Contractor in writing of the claim, but DSHS's failure to provide timely notice shall only relieve the Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to the Contractor; and
  - (2) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant the Contractor sole control of the defense and all related settlement negotiations.
- b. If such claim has occurred, or in the Contractor's opinion is likely to occur, DSHS agrees to permit the Contractor, at its option and expense, either to procure for DSHS the right to continue using the Product or Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and the Contractor determines that none of these alternatives is reasonably available, the Contractor, at its risk and expense, will take back the Product or Work Product and provide DSHS a refund. In the case of Work Product, the Contractor shall refund to DSHS the entire amount DSHS paid to the Contractor for the Contractor's provision of the Work Product. In the case of Product, the Contractor shall refund to DSHS its depreciated value. No termination charges will be payable on such returned Product, and DSHS will pay only those charges that were payable prior to the date of such return. Depreciated

value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by DSHS shall be refunded by the Contractor.

c. The Contractor has no liability for any claim of infringement arising solely from:

(1) The Contractor's compliance with any designs, specifications or instructions of DSHS;

(2) Modification of the Product or Work Product by DSHS or a third party without the prior knowledge and approval of the Contractor; or

(3) Use of the Product or Work Product in a way not specified by the Contractor;

unless the claim arose against the Contractor's Product or Work Product independently of any of these specified actions.

d. This Section, *Patent and Copyright Indemnification*, is intended to survive the expiration or termination of the agreement.

**30. Public Records Act.** The Contractor acknowledges that DSHS is subject to the Public Records Act (Chapter 42.56 RCW) and that this Contract is a public record as defined in Chapter 42.56 RCW. Any specific information that is claimed by the Contractor to be Proprietary Information must be clearly identified as such by the Contractor. "Proprietary Information" means information owned by the Contractor to which the Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws. To the extent consistent with Chapter 42.56 RCW, DSHS will maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view the Contractor's Proprietary Information, DSHS will notify the Contractor of the request and of the date that such records will be released to the requester unless the Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, DSHS will release the requested information on the date specified.

**31. Publicity.** The Contractor shall not name DSHS as a customer, nor use any information related to this Contract, in any format or media, in any Contractor's advertising or publicity without prior written consent from DSHS.

**32. Site Security.** While providing services at a DSHS location, the Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations specific to the DSHS location.

**33. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not Subcontract any of the contracted services without the prior written approval of DSHS. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its Subcontractors to perform the obligations of this Contract shall

not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.

- 34. Termination for Convenience.** DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice.
- 35. Termination for Default.** The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:
- a. Failed to meet or maintain any requirement for contracting with DSHS;
  - b. Failed to protect the health or safety of any DSHS client;
  - c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
  - d. Violated any applicable law or regulation.

If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

- 36. Termination or Expiration Procedure.** The following terms and conditions apply upon Contract termination or expiration:
- a. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.
  - b. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
  - c. The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.
  - d. DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.
  - e. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
  - f. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential and incidental damages.

**37. Treatment of Property.** All property purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by DSHS under this Contract shall pass to and vest in DSHS. The Contractor shall protect, maintain, and insure all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.

**38. Taxes.**

- a. Where required by statute or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. DSHS will pay sales or use taxes, if any, imposed on the services and materials acquired hereunder. Contractor must pay all other taxes including without limitation Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. DSHS, as an agency of Washington State government, is exempt from property tax.
- b. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract in accordance with the requirements of [Title 82 RCW](#) and [Title 458 WAC](#). Out-of-state Contractors must contact the Department of Revenue to determine whether they meet criteria to register and establish an account with the Department of Revenue. Refer to WAC 458-20-101 (Tax registration and tax reporting) and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit sales tax, DSHS shall be responsible for paying use tax, if applicable, directly to the Department of Revenue.
- c. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

## EXHIBIT B – DSHS Data Security Requirements

1. **Definitions.** The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:
  - a. “Authorized User(s)” means an individual or individuals with an authorized business requirement to access DSHS Confidential Information.
  - b. “Hardened Password” means a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as an asterisk, ampersand or exclamation point.
  - c. “Unique User ID” means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.
2. **Data Transport.** When transporting DSHS Confidential Information electronically, including via email, the Data will be protected by:
  - a. Transporting the Data within the (State Governmental Network) SGN or Contractor’s internal network, or;
  - b. Encrypting any Data that will be in transit outside the SGN or Contractor’s internal network. This includes transit over the public Internet.
3. **Protection of Data.** The Contractor agrees to store Data on one or more of the following media and protect the Data as described:
  - a. **Hard disk drives.** Data stored on local workstation hard disks. Access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.
  - b. **Network server disks.** Data stored on hard disks mounted on network servers and made available through shared folders. Access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data as outlined in Section 5. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

- c. **Optical discs (CDs or DVDs) in local workstation optical disc drives.** Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secured Area. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only Authorized Users have the key, combination or mechanism required to access the contents of the container. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers.** Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secured Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. **Paper documents.** Any paper records must be protected by storing the records in a Secured Area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.
- f. **Remote Access.** Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.
- g. **Data storage on portable devices or media.**
  - (1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:
    - (a) Encrypt the Data with a key length of at least 128 bits
    - (b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
    - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.



Physically Secure the portable device(s) and/or media by

- (d) Keeping them in locked storage when not in use
  - (e) Using check-in/check-out procedures when they are shared, and
  - (f) Taking frequent inventories
- (2) When being transported outside of a Secured Area, portable devices and media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data.
  - (3) Portable devices include, but are not limited to; smart phones, tablets, flash memory devices (e.g. USB flash drives, personal media players), portable hard disks, and laptop/notebook/netbook computers if those computers may be transported outside of a Secured Area.
  - (4) Portable media includes, but is not limited to; optical media (e.g. CDs, DVDs), magnetic media (e.g. floppy disks, tape), or flash media (e.g. CompactFlash, SD, MMC).

**h. Data stored for backup purposes.**

- (1) DSHS data may be stored on portable media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements in Section 5. Data Disposition
- (2) DSHS Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements in Section 5. Data Disposition.

**4. Data Segregation.**

- a. DSHS Data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation.
- b. DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS data. And/or,

- c. DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,
- d. DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,
- e. DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.
- f. When stored as physical paper documents, DSHS Data will be physically segregated from non-DSHS data in a drawer, folder, or other container.
- g. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

5. **Data Disposition.** When the contracted work has been completed or when no longer needed, except as noted in Section 3. Protection of Data b. Network Server Disks above, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

<b>Data stored on:</b>	<b>Will be destroyed by:</b>
Server or workstation hard disks, or  Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or  Degaussing sufficiently to ensure that the Data cannot be reconstructed, or  Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding

6. **Notification of Compromise or Potential Compromise.** The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7. **Data shared with Subcontractors.** If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub-Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.